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IN THE

Supreme Court of the United States

October Term, 1955
No. 813.

CLARENCE I. JUSTHEIM, *et al.*,

Petitioners,

vs.

DOUGLAS MCKAY, SECRETARY OF THE INTERIOR, SIGNAL OIL AND GAS COMPANY, and SOUTHWEST EXPLORATION COMPANY.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

Brief for Respondents Signal Oil and Gas Company and Southwest Exploration Company, in Opposition.

Opinions Below.

The opinion of the District Court for the District of Columbia is reported at 123 F. Supp. 560 (Jt. App. pp. 40-54).* The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 229 F. 2d 29 (Pet. App. "A", pp. 1a-4a).

Jurisdiction.

The judgment of the Court of Appeals (Pet. App. "A", p. 5a) was entered on January 5, 1956. The petition for writ of certiorari was filed on March 30, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1).

*References throughout this brief to the Joint Appendix are to the Joint Appendix attached to the brief of appellants (petitioners here) in the United States Court of Appeals for the District of Columbia Circuit.

Statute Involved.

The pertinent portions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, 30 U. S. C. Sec. 181, are set forth in Appendix A to this brief.

Question Presented.

Was the Court below correct in holding that the Mineral Leasing Act of 1920 was not applicable to the submerged lands of the marginal sea prior to the transfer of such lands to the coastal States by the Submerged Lands Act of 1953.

Statement.

This litigation involves an attempt to obtain a judicial declaration that the Mineral Leasing Act of 1920 was applicable to the submerged offshore lands of the marginal sea* prior to the passage of the Submerged Lands Act of 1953. Between April 1, 1938 and August 10, 1947 petitioners filed 50 applications for oil and gas leases under the provisions of the Mineral Leasing Act (Jt. App. pp. 54-55). Each of these applications covers submerged lands lying off the shore of California, but most of the applications are in areas where the boundary of the marginal sea is in dispute in the proceeding now pending before this Court in *United States v. California*, No. 6

*The marginal sea involved here is a three mile belt of ocean water within the boundaries of California which extends seaward from low water mark or from the seaward limit of inland waters such as bays, harbors and channels. See *United States v. California*, 332 U. S. 19, 22, 25-26.

Original (Jt. App. pp. 30, 55). However, two of the applications (Serial Nos. Sacramento 038077 and 038079) cover lands underlying the waters of the marginal sea in an area where the boundary of the marginal sea is not in question in that proceeding (Jt. App. p. 55).

Petitioners' applications were rejected by the Director of the Bureau of Land Management, Department of Interior, who held that (a) to the extent that the lands for which leases were sought underlay the inland waters of California, the United States had neither title nor power to lease and (b) in those cases where the lands for which leases were sought underlay the marginal sea, the Mineral Leasing Act did not apply (Jt. App. pp. 11, 55). The Director's decision was based upon an opinion of the Solicitor of the Department of the Interior of August 8, 1947 (60 I. D. 26) holding that the Mineral Leasing Act does not apply to the submerged offshore lands, and upon an opinion of the Attorney General of August 29, 1947 (40 Ops. Atty. Gen. 540) confirming the Solicitor's opinion. The Director's decisions were affirmed by the Secretary of the Interior or under his authority (Jt. App. p. 55).

On September 30, 1949 petitioners brought this action in the District Court for the District of Columbia asking for (1) a declaratory judgment that the Mineral Leasing Act applies to lands underlying the marginal sea off the coast of California, and (2) an order directing the Secretary of the Interior to reinstate and reconsider their applications under the Act (Jt. App. pp. 1-9). The District Court permitted respondents Signal Oil and Gas

Company and Southwest Exploration Company to intervene as parties defendant in this action (Jt. App. pp. 31-40). These respondents are producing oil companies operating under leases from the State of California which include lands applied for by some of the petitioners (*Ibid.*).

The submerged lands of the marginal belt were vested in the coastal states by the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U. S. C., Supp. II, Secs. 1301-1315. Shortly thereafter, in the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, 43 U. S. C., Supp. II, Secs. 1331-1343, Congress established special and exclusive provisions for the leasing of the vast offshore area seaward of the marginal belt. Both of these Acts preserved rights, if any, previously acquired under any laws of the United States.

The District Court, McLaughlin, J., ruled that the Mineral Leasing Act did not apply to the submerged offshore lands of the marginal sea and, accordingly, on October 29, 1954 it entered judgment against the plaintiffs and ordered the complaint dismissed. In its memorandum, the District Court held, first, that the Mineral Leasing Act applies only to public lands or to those mineral deposits which were reserved when the surface public land was patented, and that the marginal sea lands have not been and cannot now be regarded as public lands. In so holding, the Court emphasized that it was the prevailing belief at the time of the passage of the Mineral Leasing Act that the states held title to the submerged offshore lands and that the decision in *United States v. California*, 332

U. S. 19 did not hold that the United States "owned" the marginal sea lands in the sense required to make such lands "public lands" of the United States. Second, the District Court held that "it is impossible to reconcile" the Act's requirements as to "survey, erection of monuments upon the land and the outlining of the boundaries of the tract upon the ground with a legislative intention to include the submerged lands in question within the scope of the Act" (Jt. App. p. 53). Finally, the District Court found support for its conclusion in the fact that Congress has several times extended the applicability of the Mineral Leasing Act but has never taken action to include submerged offshore lands, and indeed explicitly excluded them on the only occasion on which they were mentioned, namely, the Mineral Leasing Act for Acquired Lands of August 7, 1947, 61 Stat. 913, 30 U. S. C. Sec. 351.

The Court of Appeals affirmed on January 5, 1956 in a unanimous decision by Judges Prettyman, Miller and Bastian. Referring to the District Court's memorandum opinion, the Court of Appeals said, "We think its reasoning was sound and we need not repeat it here" (Pet. App. "A", P. 2a). The Court of Appeals did discuss and distinguish *Hynes v. Grimes Packing Co.*, 337 U. S. 86, and *Alabama v. Texas* and *Rhode Island v. Louisiana*, 347 U. S. 272, and it found these cases fully consistent with the District Court's decision.

ARGUMENT.

I.

There Is No Important Question of Federal Law Involved.

The question presented here can have no public importance in the future. The passage by Congress in 1953 of two major statutes relating to the submerged offshore lands eliminated any possibility that the Mineral Leasing Act of 1920 will control the future development of those lands. In the Submerged Lands Act, 67 Stat. 29, 43 U. S. C., Supp. II, Secs. 1301-1315, Congress granted to each of the coastal States the submerged lands within three miles of its coastline or within its historic boundary.* In the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C., Supp. II, Secs. 1331-1343, Congress established special and exclusive provisions for the leasing by the federal government of the mineral resources of the vast offshore area seaward of state boundaries. Taken together, these two statutes establish a comprehensive and exclusive scheme for the administration of offshore areas and for the development of their resources.

Since this congressional action drains any possible prospective significance from the decision below, this case falls within the category of cases in which certiorari is denied or apparently is denied because the issue presented is no longer a live one. *District of Columbia v. Sweeney*, 310 U. S. 631 ("Petition for writ of certiorari . . . denied in view of the fact that the tax is laid under a statute which has been repealed and the question is therefore not of public importance"); *United States v. Abrams*,

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*Challenges to the constitutionality of this Act were rejected in *Alabama v. Texas* and *Rhode Island v. Louisiana*, 347 U. S. 272.

344 U. S. 855 (question presented whether Renegotiation Board had power under the Renegotiation Act of 1943 to fix at six per cent the interest payable to the Government on excess profits, but the Renegotiation Act of 1951 had established a four per cent interest rate and question related only to profits made before 1946); *Community Services, Inc. v. United States,* 342 U. S. 932 (question presented whether corporation was exempt from employment taxes because its profits were paid to exempt charitable or educational organizations, but statutory changes made this question academic as to tax years after 1950); *United States v. Beal,* 340 U. S. 852 (questions presented whether civilian fire fighters employed at an army installation were entitled to time and a half for overtime under overtime pay statutes and could sue for it in the federal district court, but pertinent statutes and regulations had expired); *Commissioner v. Basalt Rock Co.,* 339 U. S. 966 (question presented with respect to method of computation of income for purposes of excess profits tax, but problem could no longer arise because controlling statutory provisions had been changed); *cf. Rice v. Sioux City Cemetery,* 349 U. S. 70 (certiorari dismissed as improvidently granted where additional study of case indicated that subsequent legislation barred the ultimate question—a difficult constitutional issue—from arising again).*

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*The strength of the rule that the Court ordinarily declines to review cases if the issue is no longer live is shown by the fact that the Court denied certiorari in the *Abrams, Community Services, Beal,* and *Basalt Rock* cases even though in each case either the respondent conceded or the lower court stated that the decision sought to be reviewed was in direct conflict with a decision of another court of appeals or the Court of Claims, and in two of the cases the respondent acquiesced in the petition for certiorari. See Stern, Denial of Certiorari Despite a Conflict, (1953) 66 Harv. L. Rev. 465.

The public importance requisite for the granting of certiorari is not supplied by petitioners' assertions (p. 12) that there are forty petitioners in this case and nine other cases pending raising the same issue. The Court was not persuaded to grant certiorari in the *Abrams* case where the petition asserted that the question presented was involved in 468 unsettled Government claims for excess profits of which 200 were in litigation, or in the *Community Services* case where the respondent in acquiescing to the petition stated there were a number of pending cases presenting the issue, or in the *Beal* case where the petition asserted that from 12,000 to 15,000 civilian fire fighters might claim from 16 to 22 million dollars in similar cases. The vital factor in those cases, as in the case at bar, is that the subsequent congressional action or the expiration of the statute involved prevents the question presented from arising in the future.

Properly viewed in the context of the 1953 Acts of Congress, this litigation is important only to the parties and to a relatively small group of individuals who like Petitioners seek to use the Mineral Leasing Act to obtain leases on submerged offshore lands. Petitioners have had a full hearing on their assertedly valuable property rights, first in the Interior Department, then in the District Court and most recently in the Court of Appeals. As Chief Justice Hughes emphasized, the granting of review by this Court is not controlled by "the importance of the parties or the amount involved" but rather by "the need of securing harmony of decision and the appropriate settlement of questions of general importance." 20 A. B. A. J. 341. So measured, this case does not warrant review in this Court.

II.

There Is No Conflict of Decision.

Petitioners' claim that the decision below is in direct conflict with decisions of this Court does not withstand analysis. None of the decisions cited by petitioners impinges upon or in any way relates to the independent ground of decision of the courts below that the terms and requirements of the Mineral Leasing Act itself show that it was not the congressional purpose that the Act should be applicable to the submerged offshore lands (Jt. App. pp. 52-53). Moreover, as to the points on which they are assertedly relevant, the decisions cited by petitioners are far from being in conflict with the decision below.

The holding in *Hynes v. Grimes Packing Co.*, 337 U. S. 86, which is relied on by Petitioners (pp. 7-9), is sharply distinguishable from the question whether marginal sea land is public land within the terms of the Mineral Leasing Act. In the *Hynes* case, this Court, as the court below correctly stated, "was not dealing generally with lands located beneath the marginal seas; it was dealing with particular lands and with the necessity of fitting the statute before it into an 'existing system' of custom and administration" (Pet. App. "A", p. 3a). This Court emphasized in the *Hynes* case that the factors which warranted the inclusion of the small strip of land below low water mark in the Indian reservation were the following: "the importance of the fisheries to the Alaska natives, the temporary character of the reservation, the Annette Islands case, the administrative determination, the purpose of Congress to assist the natives by the Alaska amendment to the Wheeler-Howard Act." 337 U. S. at 116. None of these factors is present in

the case now before the Court, and there are no similar considerations which indicate that the marginal sea lands surrounding the entire United States should be held to be public lands within the terms of the Mineral Leasing Act.

The *per curiam* opinion in *Alabama v. Texas* and *Rhode Island v. Louisiana,* 347 U. S. 272, upholding the constitutionality of the Submerged Lands Act is, contrary to petitioners' claim (pp. 9-12), fully consistent with the decision in this case. What the Court held in that decision is that under Article IV, Section 3, Clause 2 of the Constitution, Congress has unlimited power *"to dispose of any kind of property** belonging to the United States." 347 U. S. at 273. The fact that the Court quoted from cases involving public lands to illustrate the range of this unlimited power does not prove that the property before the Court was deemed to be public lands. Moreover, as the court below observed, the vindication of the power of Congress to dispose of proprietary rights in lands beneath the marginal seas by special enactment certainly does not mean that such lands are subject to disposition under general laws such as the Mining Leasing Act.

Nor is there any basis for petitioners' charge (p. 9) that the decision below is in conflict with *United States v. Texas,* 339 U. S. 707, even on the limited question whether the United States was held to have "ownership" of the marginal sea in the sense required for disposition under the Mineral Leasing Act. The Court's statement in

*Emphasis in quotations throughout this brief is added unless otherwise indicated.

the *Texas* case that "We assume that as a Republic she [Texas] had not only full sovereignty over the marginal sea but ownership of it" was clearly not a *finding* of ownership, but only an *assumption* made to show that whatever special claim Texas as a Republic might have had cannot now be recognized. Moreover, as in the *California* case, 332 U. S. 19, the Court in the *Texas* case carefully refrained from referring to the United States interest as ownership or title but rather used the phrases "paramount rights" and "paramount powers." 339 U. S. at 712, 717, 719.

III.

The Decision Below Is Clearly Correct.

The courts below, the Interior Department and the Attorney General have held without dissent that the Mineral Leasing Act does not apply to the submerged lands of the marginal belt. The arguments tendered here by petitioners have been fully considered but unanimously rejected. A brief review of the merits of petitioners' claim will show beyond doubt that the decision below is clearly correct and that it is supported by a number of valid independent grounds.

A. The Terms and Requirements of the Mineral Leasing Act Show That It Was Not the Congressional Purpose That the Act Apply to Submerged Offshore Lands.

It is clear from even the most casual reading of the Mineral Leasing Act that it does not apply to all deposits and lands "owned by the United States" and that it is necessary to look beyond those isolated words to determine whether a particular category of land is included

in the Act.* Viewing the Act as a whole, the District Court pointed out that it contained explicit provisions "requiring survey [Sec. 14], erection of monuments upon the land and the outlining of the boundaries of the tract upon the ground."** The District Court concluded that "it is impossible to reconcile the inclusion" of these requirements with a "legislative intention to include the submerged lands in question within the scope of the Act" (Jt. App. pp. 52-53). The Court of Appeals reiterated this conclusion (Pet. App. "A", p. 4a). Petitioners have completely ignored this compelling ground of decision in their petition for certiorari.

Having in mind the unique characteristics of the submerged lands underlying the marginal belt,*** it is appar-

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*The late Chief Justice Harlan F. Stone as Attorney General called attention to the obvious fact that the United States "owns" the capitol ground in Washington, the lands in National cemeteries and the parks and squares in the District of Columbia and said "no one would contend that any of these latter lands are subject to the Leasing Act." 34 Ops. Atty. Gen. 171 (1924). Similarly, the late Justice Robert H. Jackson as Attorney General held that the vast body of "acquired lands" of the United States was beyond the scope of the Act despite the fact that they are "owned by the United States" and that the Act did not specifically exclude them. 40 Ops. Atty. Gen. 9 (1941).

**Section 13 of the Act provided that "The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby." 41 Stat. 441.

***The physical conditions in the offshore lands underlying the marginal sea are strikingly different from those which exist on the upland. In some parts of the marginal belt the ocean waters are hundreds of feet deep, and the average depth is at least 50 feet. Waves produced by the action of wind on water far out in the ocean increase in height and turbulence when they reach the marginal belt where at times the surf pounds with almost unbelievable destructiveness. A stronger force even than the waves are the tides which every day carry millions of tons of water in and out of the marginal belt. See Carson, "The Sea Around Us" (1951) pp. 122-123.

ent that the boundaries of a tract cannot be "readily traced on the ground" in that area as required by the Act. Likewise, erection of monuments on the submerged offshore lands is highly impractical. Moreover, submerged offshore lands have never been surveyed and to do so would be difficult and costly to say the least. The sensible construction of the courts below obviates the strained and incongruous results which would flow from making the Act applicable to the submerged offshore lands. *Cf. Foley Bros. v. Filardo,* 336 U. S. 281.

The holding of the court below is in accord with the well settled principle that, in the absence of specific reference, lands beneath navigable waters are not included within the general terms of land disposal statutes. The Supreme Court has held, for instance, that District of Columbia statutes authorizing the sale of land do not extend to lands beneath navigable waters. *Morris v. United States,* 174 U. S. 196; see also, *District of Columbia v. Cropley,* 23 App. D. C. 232 (1904). Federal statutes providing for the disposal of lands within territories likewise do not include such submerged lands. *Shively v. Bowlby,* 152 U. S. 1. Similarly, state statutes providing for the disposition of lands have repeatedly been held not to extend to lands beneath navigable waters. *Illinois Central R.R. Co. v. City of Chicago,* 173 Ill. 471, 50 N. E. 1104 (1898), affirmed, 176 U. S. 646 (1900); *James River Co. v. Old Dominion Corp.,* 138 Va. 461, 122 S. E. 344 (1924). These decisions, like the decision of the court below, reflect the fact that statutes designed for land areas simply do not make sense with respect to lands beneath navigable waters whose nature and characteristics are so vastly different.

The basic inappropriateness of the Mineral Leasing Act for application to the submerged offshore lands is made evident by comparing and contrasting it with the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, 43 U. S. C., Supp. II, Secs. 1331-1343, in which Congress established a federal leasing program to develop the mineral resources of the submerged lands lying seaward of the marginal belt. This 1953 Act abounds in provisions which recognize the special nature of the offshore areas, and indeed almost every provision of the Act has the earmarks of having been designed especially for the unique offshore operations.* Although these specially designed provisions of the 1953 Outer Continental Shelf Lands Act obviously are essential for the proper regulation of offshore operations, the Mineral Leasing Act contains not a single one of them. Thus, it is not surprising that Congress made certain that the Mineral Leasing Act would not be applicable in these waters by providing in Section 4(a)(1) that "mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this [the Outer Shelf] Act."

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*For example: Section 3(b) directs that the "Act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected." Section 4(e) authorizes Coast Guard regulations for the safety of life and property in connection with the operations for the development of minerals. Section 4(f) gives the Secretary of the Army authority to prevent obstructions to navigation in the navigable waters involved.

B. Submerged Offshore Lands Were Not Public Lands Within the Meaning of the Mineral Leasing Act.

An independent ground of the decisions below was that the Mineral Leasing Act applies only to public lands and that the submerged offshore lands were not public lands. Petitioners challenge both aspects of this holding.

The Act applies only to public lands. The District Court was entirely justified in concluding that the Act is limited to public lands.* Prior to September 27, 1909 oil and gas lands were open to location and entry under the placer mining laws. On September 27, 1909, President Taft by proclamation withdrew large areas of the public lands containing oil and gas from entry and location, "In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain." See *United States v. Midwest Oil Co.*, 236 U. S. 459, 467 (1915). Additional areas were withdrawn pursuant to the Pickett Act of June 25, 1910, 36 Stat. 847, which authorized the President to "withdraw from settlement, location, sale, or entry any of the public lands." Congress promptly set to work to provide legislation for the development of the mineral resources of the withdrawn lands.

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*Petitioners assert (p. 7) that the courts below relied "largely upon the use of the words 'public domain' in the title of the Mineral Leasing Act" in concluding that the Act applies only to public lands. Had the courts below chosen to rely primarily on the title, it would have been entirely appropriate to do so under the circumstances present here. *Maguire v. Commissioner*, 313 U. S. 1, 9. However, the fact is that the District Court's conclusion that the Act is limited to public lands was based on the "circumstances which prompted the enactment of this legislation, the legislative history, and the administrative interpretations of the Act" (Jt. App. p. 48).

Bills to provide for a mineral leasing act were considered and debated in every session of Congress between 1914 and the passage of the Act in 1920. Repeated references throughout the reports on these bills make it clear that the Act was intended to apply only to public lands.* When the bill which was destined to become the Mineral Leasing Act of 1920 was introduced in the 66th Congress, Senator Smoot of Utah referred to the legislation as affecting the "public lands" (58 Cong. Rec. 4111), and when the bill was brought to the floor of the House, Chairman Sinnott of the Public Lands Committee made a similar reference (58 Cong. Rec. 7509).

From the earliest administrative construction by Attorney General Stone in 1924 to the present, the consistent administrative practice has been to construe the Act as limited to public lands.** Moreover, in amendments to the Mineral Leasing Act Congress has consistently shown its understanding that the Act is limited to public lands.***

Offshore lands were not public lands within the meaning of the Mineral Leasing Act. At the time of the enactment of the Mineral Leasing Act in 1920 it was generally accepted that lands below the high water mark of the ocean were not public lands of the United States. *Pollard v. Hagan*, 3 How. 212; *Mann v. Tacoma Land Co.*, 153 U. S. 273, 284; *Barney v. Keokuk*, 94 U. S. 324, 338. This Court recognized this fact in the *Cali-*

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*H. R. Rep. 668, 63rd Cong., 2d Sess., p. 1; S. Rep. 947, 63d Cong., 3d Sess., pp. 5, 6; H. R. Rep. 17, 64th Cong., 1st Sess.; S. Rep. 319, 64th Cong., 1st Sess.; H. R. Rep. 563, 65th Cong., 2d Sess.; H. R. Rep. 206, 65th Cong., 2d Sess.

**34 Ops. Atty. Gen. 171 (1924); 40 Ops. Atty. Gen. 9 (1941); 60 I. D. 26.

***Act of August 25, 1937, 50 Stat. 808; Act of December 24, 1942, 56 Stat. 1080; Act of August 8, 1946, 60 Stat. 950; Act of June 3, 1948, 62 Stat. 289.

fornia case when it said that in following the doctrine of the *Pollard* case, the Court had "used language strong enough to indicate" that it "then believed that states not only owned tidelands and soil under navigable inland waters but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not." 332 U. S. at 36. The intention of Congress in passing the Mineral Leasing Act should be determined on the basis of the contemporary understanding in 1920 that the lands below high water mark are not public lands. See *Lawder v. Stone,* 187 U. S. 281, 293.

The subsequent decisions in *United States v. California,* 332 U. S. 19, and *United States v. Texas,* 339 U. S. 707, holding that the United States has "paramount rights" in the three mile marginal belt, confirm the principle that marginal sea lands are not public lands. In the *California* case, the brief for the United States pointed out (p. 62) that California was admitted to the Union upon the condition that the United States retained ownership of all public lands within the State. 9 Stat. 452. If the Court had considered that the marginal sea came within the category of public lands, this condition of the Act of Admission would have provided a clear and ample ground for the decision. However, the Court declined to adopt the Act of Admission as the foundation of its decision and relied instead on the special responsibilities of the federal government in the marginal belt.

In the *Texas* case the Court had under consideration the joint resolution admitting Texas to the Union which provided that the state "shall also retain all the vacant and unappropriated lands lying within its limits." 5 Stat. 797. On the basis of this joint resolution Texas argued that it was entitled to retain the marginal sea area as

"vacant and unappropriated lands." Since it was conceded that the term "vacant and unappropriated lands" is synonymous and equivalent to "public lands," Texas relied upon *Hynes v. Grimes Packing Co.*, 337 U. S. 86, as authority for its argument that marginal sea lands are public lands and were therefore retained by Texas. However, the Supreme Court refused to sustain Texas' argument that the marginal sea area was retained by her and thus refused to give to the *Hynes* case the effect which was claimed by Texas in that case and which is asserted here by petitioners.

C. Marginal Sea Lands Were Not "Owned" by the United States in the Sense Required for Disposition Under the Act.

In concluding that the Mineral Leasing Act does not apply to the offshore submerged lands, the courts below placed reliance on the fact that it has never been held that the submerged lands were "owned" by the United States in the sense in which that term is used in the Mineral Leasing Act (Jt. App. p. 51).* There is firm support for this view in the three *Marginal Sea* cases in which the United States' paramount rights in these offshore waters were enunciated. *United States v. California*, 332 U. S. 19 (1947); *United States v. Louisiana*, 339 U. S. 699 (1950); *United States v. Texas*, 339 U. S. 707 (1950). The holding of the Court in the *California* case is notable for its studied avoidance of the customary property terms such as "title" or "ownership in fee" and the careful use of the phrase "paramount rights in and power over." 332 U. S. at 38-39. Moreover, after the

*Section 1 of the Act provides that any "deposits . . . and lands containing such deposits owned by the United States" are subject to disposition.

decision, the United States Attorney General petitioned the Court to enter a decree providing that the United States is "possessed of paramount rights of *proprietorship* in, and full dominion and power over" the marginal sea. In keeping with the language of its opinion, however, the Court struck the words "of proprietorship" out of the proposed decree. 332 U. S. 804.

In the opinions and decrees in the *Louisiana* and *Texas* cases the Court again carefully refrained from speaking of the United States' interests in terms of United States ownership and referred instead to the Federal Government's paramount rights and paramount powers, 339 U. S. at 704, 705, 719; 340 U. S. 899, 900. Moreover, the Court in the *Louisiana* case explicitly stated that "the issue in this class of litigation does not turn on title or ownership in the conventional sense." 339 U. S. 699, 704.*

D. Subsequent Legislation and Administrative Construction Indicate That the Mineral Leasing Act Did Not Extend to the Offshore Lands.

The District Court pointed out that Congress has not taken any action to extend the Mineral Leasing Act to the marginal sea lands although it has five times extended the Act to lands not previously within its scope.**

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*The decrees in the *Marginal Sea* cases are to be contrasted with that entered in *United States v. Wyoming*, 331 U. S. 440, which the Court considered contemporaneously with the *California* case. In the *Wyoming* case, where the lands were claimed by the United States as part of the public domain, the judgment decreed that the United States is the "owner in fee." 333 U. S. 835.

**Act of March 4, 1923, 42 Stat. 1448 (certain lands in Red River); Act of June 27, 1930, 46 Stat. 819 (certain lands in Wyoming); Act of May 23, 1934, 48 Stat. 796 (Fort Morgan Military Reservation, Alabama); Act of July 3, 1941, 55 Stat. 577 (certain lands in Niobrara County, Wyoming); Act of August 7, 1947, 61 Stat. 913 (acquired lands).

In one of these acts—the Mineral Leasing Act for Acquired Lands of 1947—Congress expressly excepted "tidelands . . . or submerged lands" from the extended coverage of the Act.* These statutes indicate that Congress is of the view that the Act did not provide for and is not appropriate for the administration of that offshore area.**

Administrative officials charged with construction of the Mineral Leasing Act have without exception ruled that the Act is not applicable to the marginal sea lands.*** In 1946 Secretary of the Interior, Harold L. Ickes, made recommendations for the administration of the marginal belt and stated:

> "Implicit in these recommendations is the thought that the Mineral Leasing Act of 1920 is not applicable to submerged lands. A reading of the act will reveal

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*The District Court said that the Solicitor of the Department of Interior was justified in assuming that "the reason for this exclusion of submerged coastal lands was that the Mineral Leasing Laws, as amended, had not been extended to these areas and that, therefore, they would be covered by the new act unless excluded from its effect" (Jt. App. p. 53). This assumption is borne out by the report of the House Committee on Public Lands with respect to the acquired lands act which states that "It is the judgment of this committee that this bill should not and does not apply to the tidelands or submerged lands, and it is not intended that such lands would be considered as 'acquired lands', as defined by section 2 of this bill." H. R. Rep. 550, 80th Cong., 1st Sess., p. 3.

**That "subsequent legislation may be considered to assist in the interpretation of prior legislation on the same subject" is shown by *Great Northern Railway Co. v. United States*, 315 U. S. 262, 276, 277.

***This Court has indicated that administrative practice has particular significance in cases involving the administration by the Interior Department of lands in which the United States has an interest. See *McLaren v. Fleischer*, 256 U. S. 477, 481 (1921); *cf. United States v. Wyoming*, 331 U. S. 440, 446 (1947).

> that in many particulars its provisions would not fit the problems presented in the administration of submerged lands. . . . More importantly, the problem of the submerged coastal lands was not considered when the act was passed, and Congress is entitled to and should fix its policy with specific reference to these lands." (Hearings on H. J. Res. 225 and S. J. Res. 48, 79th Cong. 2d Sess., p. 11.)

After this Court's decision in the *California* case, the Interior Department (60 I. D. 26) and the Attorney General (40 Ops. Atty. Gen. 540) ruled that the Mineral Leasing Act is not applicable to the submerged offshore lands. Moreover, in connection with legislation proposed in Congress for the administration of the marginal belt since 1947, federal officials have consistently maintained that the Mineral Leasing Act did not apply.*

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*Hearings before Senate Interior and Insular Affairs Committee on S. J. Res. 20, 82nd Cong., 1st Sess., p. 29; Hearings before Senate Interior and Insular Affairs Committee on S. J. Res. 195, 81st Cong., 2nd Sess., pp. 5-7, 214; and Hearings before Senate Interior and Insular Affairs Committee on S. J. Res. 13 and other bills, 83rd Cong., 1st Sess., p. 927.

Conclusion.

For each and all of the foregoing reasons it is submitted that the petition for certiorari should be denied.

Respectfully submitted,

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